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*Counsel to CDP Investissements Inc.*

*Counsel to Community First Partners, LLC,  
Celsius SPV Investors, LP, and Celsius  
New SPV Investors, LP*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: ) Chapter 11  
CELSIUS NETWORK LLC, et al.,<sup>1</sup> ) Case No. 22-10964 (MG)  
Debtors. ) (Jointly Administered)

**NOTICE OF FILING OF FEBRUARY 6, 2023, HEARING PRESENTATION**

**PLEASE TAKE NOTICE** that Community First Partners, LLC, Celsius SPV Investors, LP, Celsius New SPV Investors, LP, and CDP Investissements Inc. hereby file the presentation (the “Presentation”), attached hereto as **Exhibit A**, that will be used at the hearing

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

that will take place on **Monday, February 6, 2023 at 2:00 p.m., prevailing Eastern Time,** before the Honorable Martin Glenn, Chief United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York.

**PLEASE TAKE FURTHER NOTICE** that copies of the Presentation and any pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/celsius>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: February 5, 2023  
New York, New York

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**Exhibit A**

# Milbank

February 6, 2023

## Evidentiary Hearing: In re Celsius Network LLC

*Counsel to the Series B Preferred Holders*

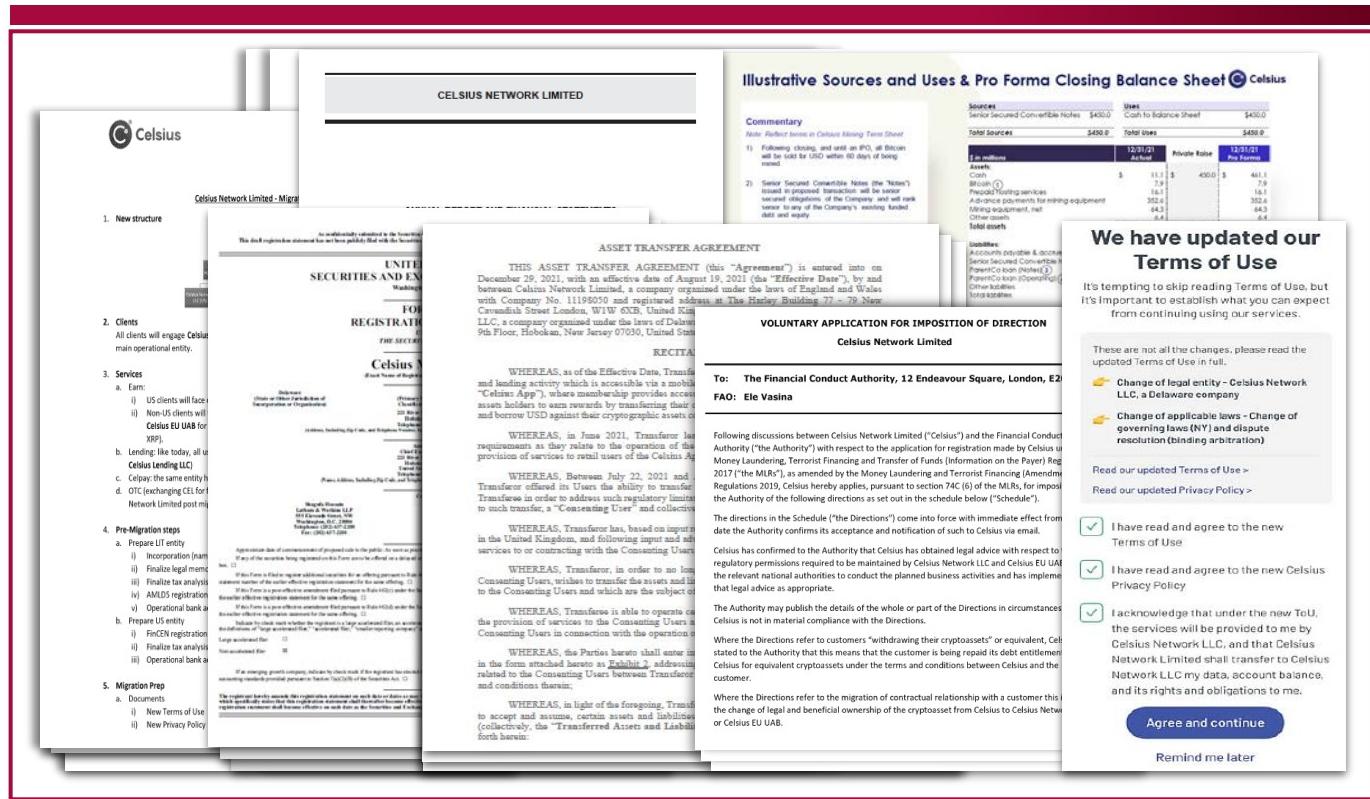


LLC is the only Debtor Liable to Customers Under the Terms of Use

The plain reading of the Terms of Use and the overwhelming evidence are consistent with LLC being the only Debtor liable.

## **25. Indemnification and Limitation of Liability; Legal Fees and Costs for Lawsuits**

kind. Except for any setoff permitted by applicable law and Section 9 of these Terms, any obligations of ours may be satisfied solely from the assets of Celsius. Without limiting the generality of the foregoing, in no event shall you have any recourse, whether by setoff or otherwise, with respect to our obligations, to or against any assets of any person or entity other than Celsius, including, without limitation, any member, shareholder, Affiliate, investor, employee, officer, director, agent or advisor of Celsius. For the avoidance of doubt, the foregoing shall not limit any setoff permitted by applicable law and Section 9 of these Terms.



## The Terms of Use Unambiguously Limit Liability to LLC

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# The Terms of Use Unambiguously Limit Customer Liability to LLC

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Section 25 of the Terms of Use carves Affiliates out of liability, leaving only LLC liable.

## 25. Indemnification and Limitation of Liability; Legal Fees and Costs for Lawsuits

kind. Except for any setoff permitted by applicable law and Section 9 of these Terms, any obligations of ours may be satisfied solely from the assets of Celsius. Without limiting the generality of the foregoing, **in no event shall you have any recourse, whether by setoff or otherwise, with respect to our obligations, to or against any assets of any person or entity other than Celsius, including, without limitation, any member, shareholder, Affiliate, investor, employee, officer, director, agent or advisor of Celsius.** For the avoidance of doubt, the foregoing shall not limit any setoff permitted by applicable law and Section 9 of these Terms.

# The Terms of Use Distinguish Between LLC and its Affiliates

When the terms Celsius and Affiliate(s) are used in the same phrase, the context is clear that Celsius refers to only LLC.

- Contrary to the Committee's assertion, the Terms of Use provide that “[c]apitalized terms shall have the meanings assigned to them in the[] Terms [of Use], *unless the context requires otherwise.*”

## Section 4E (Borrow)

You may apply to borrow certain Fiat currencies or Stablecoins from an Affiliate of Celsius, as will be agreed between you and Celsius or its Affiliates in writing, against Eligible Digital Assets in your Celsius Account (each,

## Section 19 (Closing a Celsius Account)

lable to you or any third party for termination of access to the Services or deletion of your information or Celsius Account data. You acknowledge that any legal obligations you may have under any other agreement with Celsius or its Affiliates (including any Loan Agreement or agreement governing lending or investing in Celsius or its Affiliates) will not be affected in any way by the termination of these Terms.

## Section 4F (CelPay)

By entering into any CelPay transaction you explicitly authorize Celsius or its Affiliates to deduct such amounts of Eligible Digital Asset as you instruct us to

## Section 9 (Setoff and Security Interest Rights)

You grant us a security interest in any and all Eligible Digital Assets using the Earn Service for debts, amounts owed, or liabilities incurred to us or any of our Affiliates by you or any of your Authorized Representatives, if any (“Obligations”). Obligations may include both secured and unsecured debts, and Obligations you owe individually or together with someone else, including Obligations under other transactions or agreements between you and us or any of our Affiliates.

We also may take or set off from any Digital Asset in your Celsius Account, including any of your Digital Assets using the Custody Service (i.e., in a Custody Wallet), or deduct from any obligations Celsius may have to you, any direct, indirect, and acquired Obligations that you owe us or our Affiliates.

These rights in addition to the rights we have to transfer or

# Migration of Customer Liabilities from CNL to LLC

## June 2021

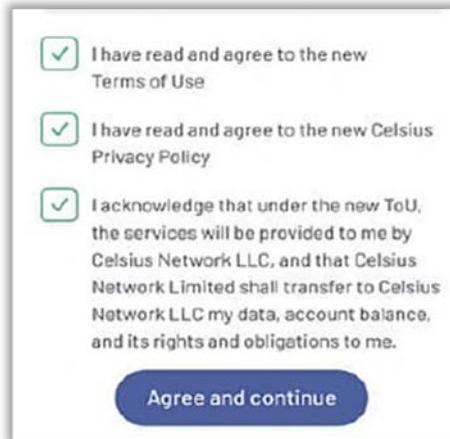
- CNL informs FCA it will migrate its business from CNL to LLC
- Plan to migrate publicly announced via "Celsius Community Update"

After careful consideration, we are excited to share that we will be migrating our main business activity and headquarters from the United Kingdom to the United States and where applicable, to several other jurisdictions. This will provide Celsius and its community with more stability, clarity, and development opportunities to continue expanding our global impact and infrastructure.

Our team has been working diligently to chart the path for the future of Celsius, and we share this news with the utmost transparency and timeliness and with a clear path ahead. In the coming weeks, we will be sharing our detailed migration plan with the community, which will include updates to our Terms of Use and Privacy Policy. Thank you for your continued support as we work to bring the next 100 million people into crypto. We look forward to this exciting move, and we will be sharing additional information as it becomes available.

## July 2021

- CNL signs Direction Agreement with FCA re migration of customers' contractual relationship
- Terms of Use Version 6 adopted
- Customers required to agree or otherwise terminate their relationship with CNL



## August 2021

- CNL transfers customer assets and liabilities to LLC to complete migration

### ARTICLE I THE TRANSACTION

I.1 Transfer and Assumption. Upon the terms and subject to the conditions set forth in this Agreement and effective upon the execution hereof, Transferee shall accept and assume from Transferor, and Transferor shall transfer and assign to Transferee, the Transferred Assets and Liabilities.

### Exhibit 1 – Transferred Assets and Liabilities

Except as otherwise provided, the Transferred Assets and Liabilities are as follows:

1. All of Transferor's obligations related to or resulting from the Consenting Users' use of the Celsius App, including any obligation of Transferor to return collateral following repayment of a loan made to a Consenting User, all obligations to repay loans of cryptographic assets made by Consenting Users to Transferor prior to the Effective Date and obligations to pay financing fees (known as "Rewards" on the Celsius App) to Consenting Users in respect of loans made by Consenting Users through the Celsius App.

- CNL stops providing services to customers on August 23

## The Evidence Supports the Plain Reading of the Terms of Use

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# The Parties Did Not Intend for All Debtors to Be Liable

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The plain reading of the Terms of Use is consistent with the intent to migrate customers' contractual relationship from CNL to LLC and that Affiliates would continue to be carved out of liability.

The documents also support the plain reading:



Communications to customers



Direction Agreement effectuating the migration plan



Asset Transfer Agreement



Assignments and Amendments of Omnibus Wallet Agreements



Mining S-1



Communications to the Board



Post-petition filings

# Extrinsic Evidence: Communications to Customers

Pursuant to the migration plan agreed to by the FCA, customers were notified of the migration and required to either agree to Terms of Use Version 6 or otherwise terminate their relationship with CNL.

**Celsius Community Update — June 23, 2021**

Our team has been working diligently to chart the path for the future of Celsius, and we share this news with the utmost transparency and timeliness and with a clear path ahead. In the coming weeks, we will be sharing our detailed migration plan with the community, which will include updates to our Terms of Use and Privacy Policy. Thank you for your continued support as we work to bring the next 100 million people into crypto. We look forward to this exciting move, and we will be sharing additional information as it becomes available.

**Title:** Celsius Community Update — July 22, 2021  
**Subheading:** An overview of the updates to our Terms of Use and Privacy Policy for Celsius customers

Last month, Celsius announced its plans to migrate its core business operations from Celsius' UK entity (Celsius Network Limited) to the US entity (Celsius Network LLC). As of July 22, 2021, we have updated our Terms of Use and Privacy Policy for all Celsius customers to reflect this migration.

The main changes to our Terms of Use include:

- Your engagement will be with Celsius Network LLC, A Delaware company;
- Your relationship with us will be subject to the governing laws of New York;
- Disputes will be settled by arbitration;

## We have updated our Terms of Use

It's tempting to skip reading Terms of Use, but it's important to establish what you can expect from continuing using our services.

These are not all the changes, please read the updated Terms of Use in full.

- 👉 Change of legal entity - Celsius Network LLC, a Delaware company
- 👉 Change of applicable laws - Change of governing laws (NY) and dispute resolution (binding arbitration)

[Read our updated Terms of Use >](#)  
[Read our updated Privacy Policy >](#)

I have read and agree to the new Terms of Use

I have read and agree to the new Celsius Privacy Policy

I acknowledge that under the new ToU, the services will be provided to me by Celsius Network LLC, and that Celsius Network Limited shall transfer to Celsius Network LLC my data, account balance, and its rights and obligations to me.

[Agree and continue](#)

[Remind me later](#)

### External E-mail

Hi first name,

As a valued Celsius customer, we are writing to inform you about updates to our Terms of Use and Privacy Policy which require your attention.

The main changes to our Terms of Use include:

- Your engagement will be with Celsius Network LLC, A Delaware company;
- Your relationship with us will be subject to the governing laws of New York;
- Disputes will be settled by arbitration;

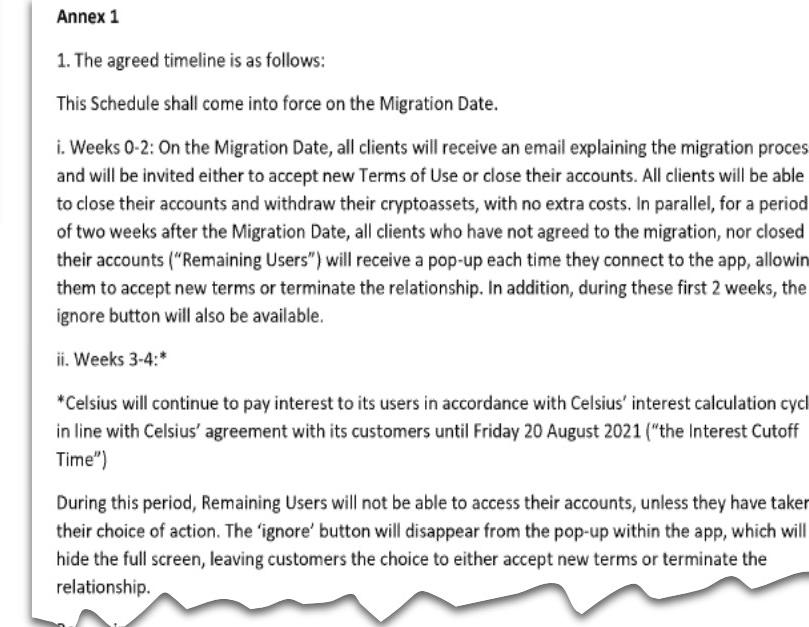
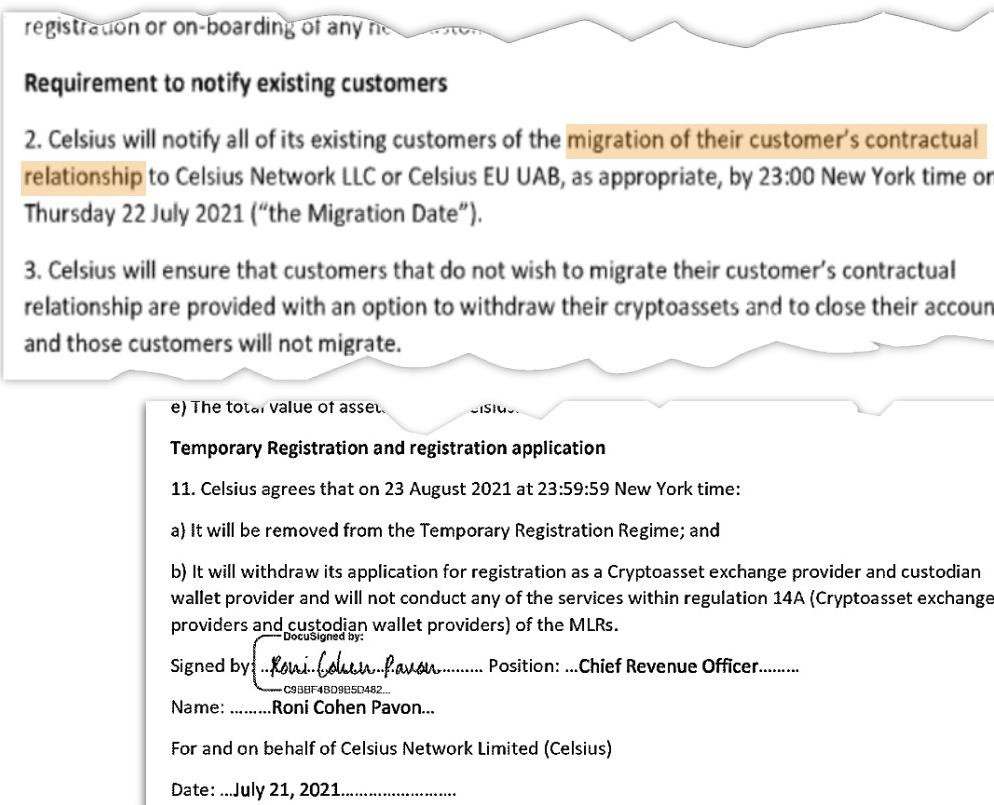
To review and accept these updates, log in to your Celsius account on mobile or desktop. These are not all of the changes in the updated documents, and you are requested to carefully read and make sure you understand the new terms.

If you do not accept our updated Terms of Use and Privacy Policy by August 5, 2021, you will lose access to the services provided in the Celsius app, and withdrawals will only be processed by reaching out to our customer support team. You will continue to earn rewards as before, and any active loans will not be affected.

If you do not accept by August 19, 2021, your account will no longer be eligible to earn rewards.

# Extrinsic Evidence: Direction Agreement

Pursuant to the Direction Agreement, CNL agreed with the FCA that it would migrate its contractual relationship with customers.



# Extrinsic Evidence: Assignments of Omnibus Wallet Agreements

Certain agreements with “omnibus partners” were also migrated from CNL to LLC.

- Those assignment agreements are “subject to” updated Terms of Use with LLC.

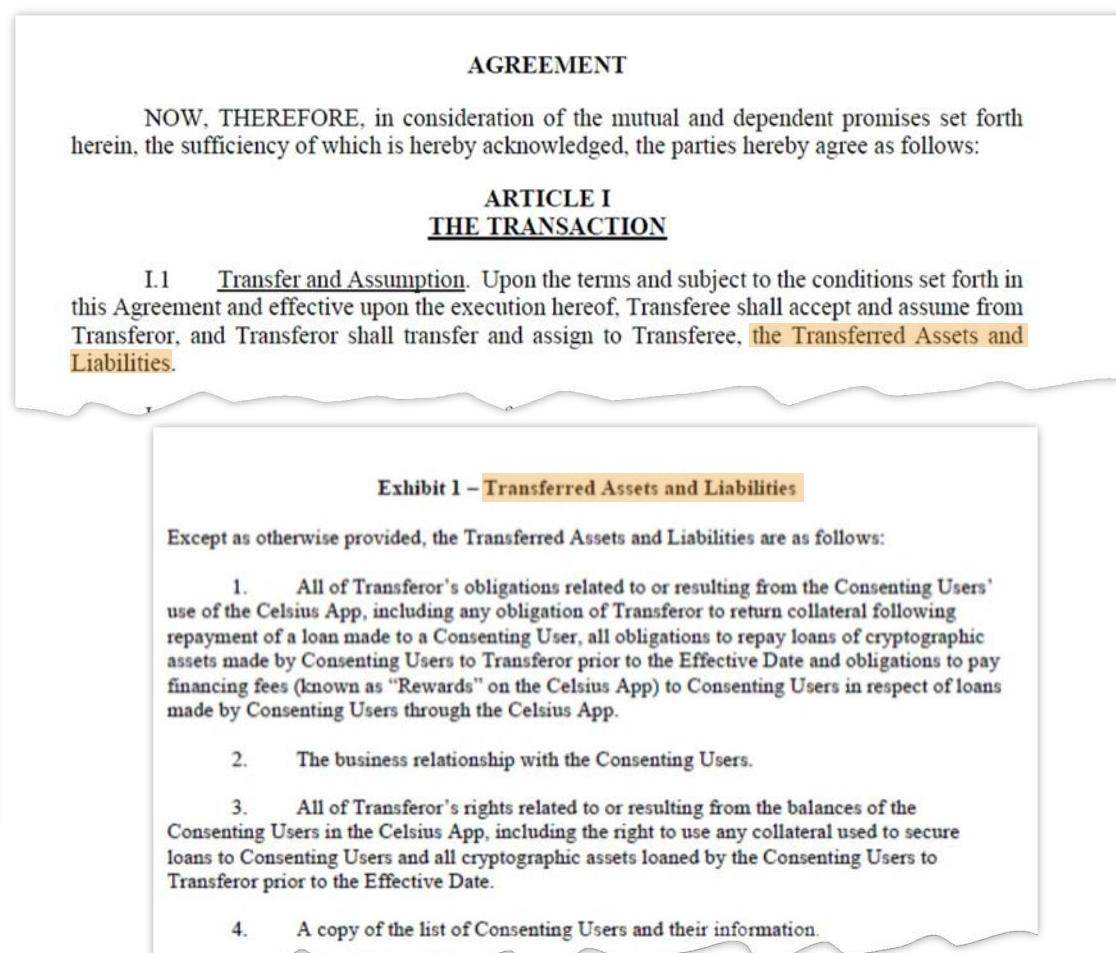
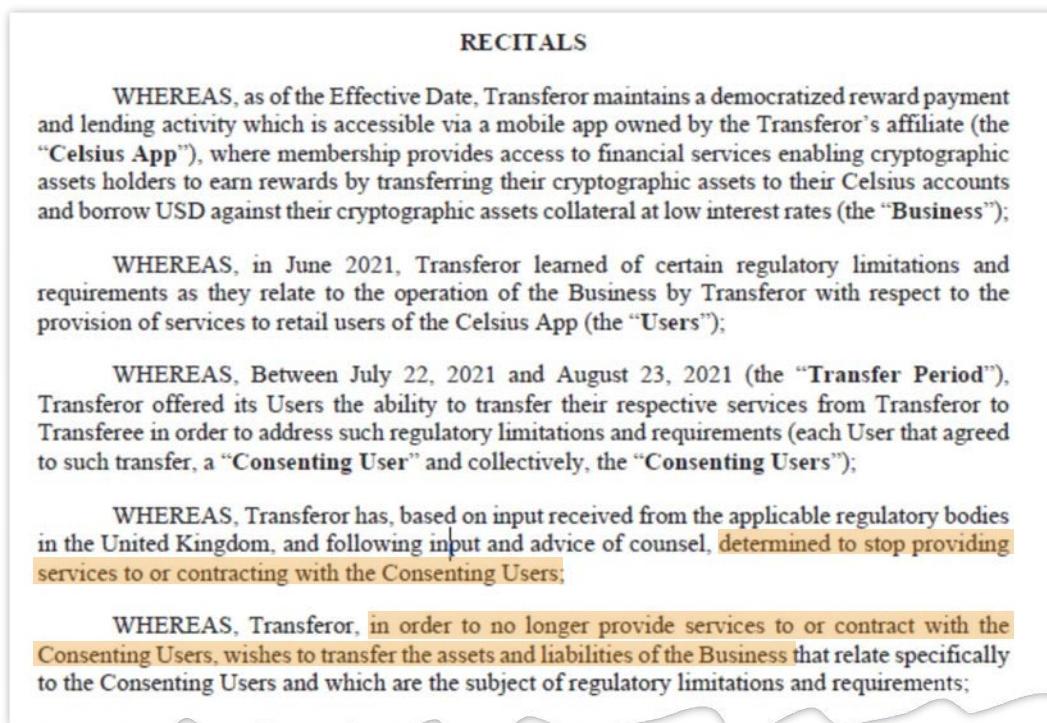
## ASSIGNMENT AND AMENDMENT TO OMNIBUS WALLET SERVICE AGREEMENT

THIS ASSIGNMENT AND AMENDMENT TO OMNIBUS WALLET SERVICE AGREEMENT (this “Amendment”) dated August 19, 2021 is made by and between Celsius Network Limited (“Celsius UK”), Celsius Network LLC (“Celsius US”), Celsius EU UAB (“Celsius EU”) and Voyager Digital LLC, (“Partner”) (each, a “Party” and collectively, the “Parties” and Partner and Celsius UK, the “Original Parties”). Any capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

2. Terms of Use. Partner understands and acknowledges that, in connection with the Migration, the Services will be subject to updated terms of use with Celsius US and Celsius EU, and that Celsius US and Celsius EU may, at any time and in their sole discretion, modify their terms of use as available at their website (<http://celsius.network>). Celsius US and Celsius EU shall endeavor, but shall not be obligated, to provide Partner advance notice of any updates or changes to Celsius US’ and Celsius EU’s terms of use.

# Extrinsic Evidence: Transfer Agreement

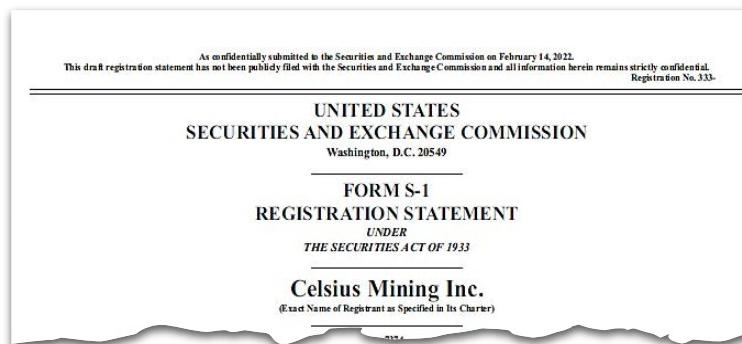
CNL (Transferor) and LLC (Transferee) executed an Asset Transfer so that CNL could stop providing services to or contracting with customers.



# Extrinsic Evidence: Mining S-1

The confidential S-1 statement for Celsius Mining Inc. filed with the SEC did not disclose obligations related to customer liabilities.

- The Debtors do not dispute this omission. Instead, the Debtors assert that “if there was an IPO of Celsius Mining, Celsius could have amended the Terms of Use to remove liability from that entity as part of the IPO.” (*Debtors’ Response Brief, Dkt. No. 1962*)



LIABILITIES AND EQUITY (DEFICIENCY)		
<b>CURRENT LIABILITIES</b>		
Other payables	3,877	—
Loans payable to related parties - current portion	29,910	—
Other payables to related parties	24,033	10,380
<b>Total current liabilities</b>	<b>57,820</b>	<b>10,380</b>
<b>NON-CURRENT LIABILITIES</b>		
Loans payable to related parties	210,619	27,725
Deferred income liabilities, net	8,292	—
<b>Total non-current liabilities</b>	<b>218,911</b>	<b>27,725</b>
<b>TOTAL LIABILITIES</b>	<b>\$ 276,731</b>	<b>\$ 38,105</b>

CELSIUS MINING LLC		
BALANCE SHEETS		
U.S. dollars in thousands, except unit and per unit data		
	September 30, 2021 (Unaudited)	December 31, 2020
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 3,903	\$ 127
Other receivables - short term	3,188	4,873
Net investment in financing lease - current portion	3,200	—
Investment in convertible debt	56,307	—
Investment in equity securities	50,425	—
<b>Total current assets</b>	<b>118,621</b>	<b>5,000</b>
<b>NON-CURRENT ASSETS</b>		
Other receivables	6,842	—
Advances and deposits for mining equipment	137,996	20,579
Equipment, net	49,737	—
Net investment in financing lease	1,400	5,240
Deferred tax assets	—	93
<b>Total non-current assets</b>	<b>189,133</b>	<b>32,754</b>
<b>TOTAL ASSETS</b>	<b>\$ 307,754</b>	<b>\$ 37,754</b>
<b>LIABILITIES AND EQUITY (DEFICIENCY)</b>		
<b>CURRENT LIABILITIES</b>		
Other payables	3,877	—
Loans payable to related parties - current portion	29,910	—
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<b>TOTAL LIABILITIES</b>	<b>\$ 276,731</b>	<b>\$ 38,105</b>
Commitments and contingencies (Note 11)		
EQUITY (DEFICIENCY)		
Units of no par value - Outstanding - 100 Units	—	—
Retained earnings (accumulated deficit)	31,023	(35)
<b>Total equity (deficiency)</b>	<b>\$ 31,023</b>	<b>\$ 37,754</b>

## Extrinsic Evidence: Communications to the Board

The Debtors described the migration to the Board as an agreement where CNL would no longer be providing customer-facing services and noted that the migration was completed in August 2021.



### Financial Conduct Authority (UK)

- On June 30, 2020 Celsius applied for a crypto asset business registration with the FCA, and was granted a temporary registration; throughout the following year, the Company had provided the FCA with all information and documentation requested by the FCA in a timely manner.
- On June 11, 2021 the FCA advised the Company that it should withdraw its MLRs application and cease operations in the UK, following the FCA's concerns that Celsius' Earn product constitutes a Collective Investment Scheme (CIS).
- Following discussions, Celsius and the FCA entered into a "Voluntary Application for Imposition of Direction", agreeing to a migration plan, following which the Company will no longer be providing its customer-facing services from the UK, and the Company withdrew its application. The migration was successfully completed in August 2021, and withdrew its application.
- The FCA further expressed its intention to commence enforcement action for alleged violations by Celsius of the Financial Services and Markets Act ("FSMA"), and that it retains the right to regulate Celsius' activities.

## Extrinsic Evidence: Customers Proofs of Claims

Of the 10,210 proofs of claims filed prior to the Bar Date Order, less than 0.3% could have possibly been filed against all Debtors.

<i>Proofs of Claims Filed Against Debtors through Nov. 15, 2022, as Listed on Stretto Jan. 30, 2023</i>		
<b>Debtor</b>	<b># of Claims</b>	<b>% of Claims</b>
Celsius Network LLC	9707	95.07%
Celsius Lending LLC	137	1.34%
Celsius US Holding LLC	114	1.12%
Celsius Network Inc.	107	1.05%
Celsius Network Limited	73	0.71%
Celsius KeyFi LLC	20	0.20%
Celsius Networks Lending LLC	23	0.23%
Celsius Mining LLC	18	0.18%
All Debtors	11	0.11%
<b>Totals</b>	<b>10210</b>	<b>100.00%</b>

## The Debtors' and Committee's Interpretation Is Not Plausible

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## The Debtors' and Committee's Interpretation Is Not Plausible

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The Debtors and Committee argue that all Debtors are liable because Celsius should be interpreted to include all entities in the Debtors' corporate structure.

This interpretation:



Violates principles of contract interpretation



Is completely different than the historical relationship between Affiliates and customers



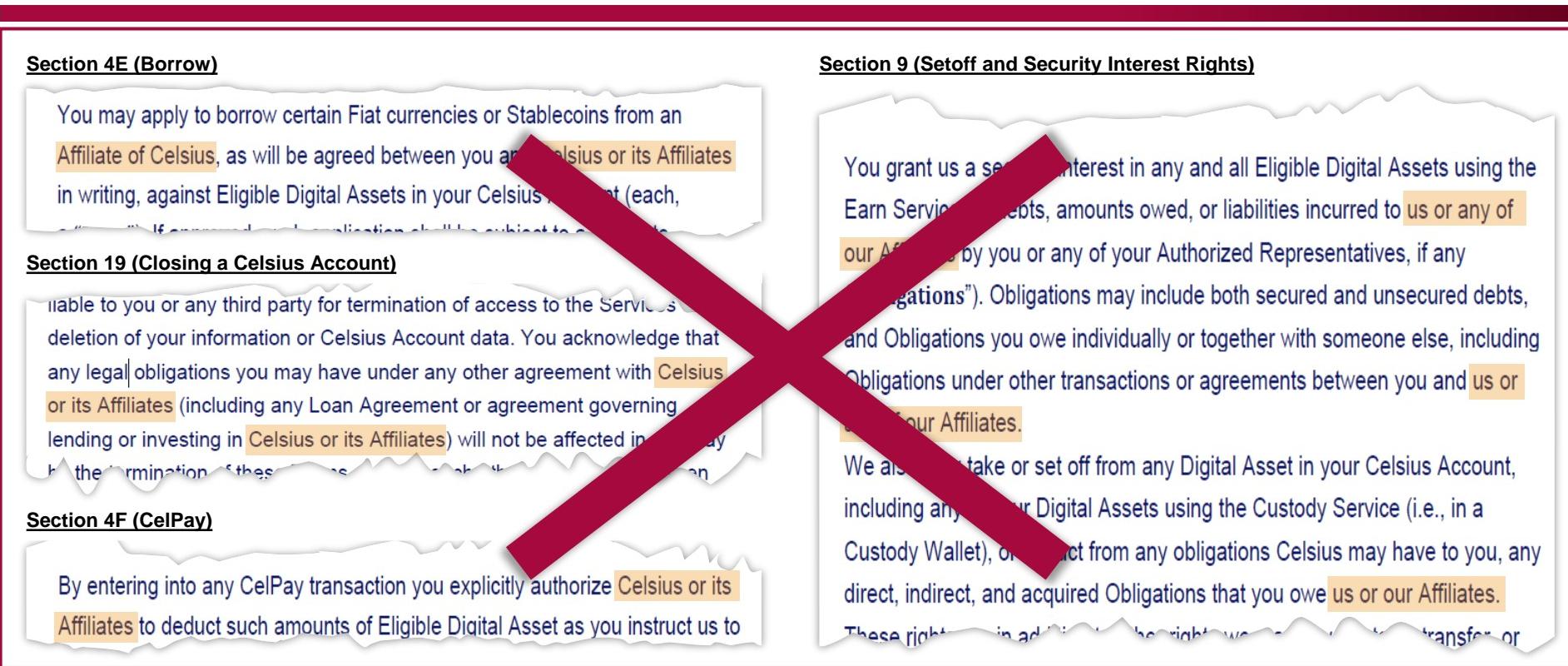
Undermines the parties' clear intent



Is not supported by any document, witness, declaration, or other form of evidence

# The Debtors' and Committee's Interpretation Is Not Plausible (Cont'd)

The Debtors' and Committee's interpretation cannot be harmonized with the provisions that distinguish between Celsius and its Affiliate(s), including the Limitation of Liability provision.



## The Debtors' and Committee's Interpretation Is Not Plausible (Cont'd)

The Debtors also argue that the Limitation of Liability provision only carves out Affiliates that are outside the corporate structure.

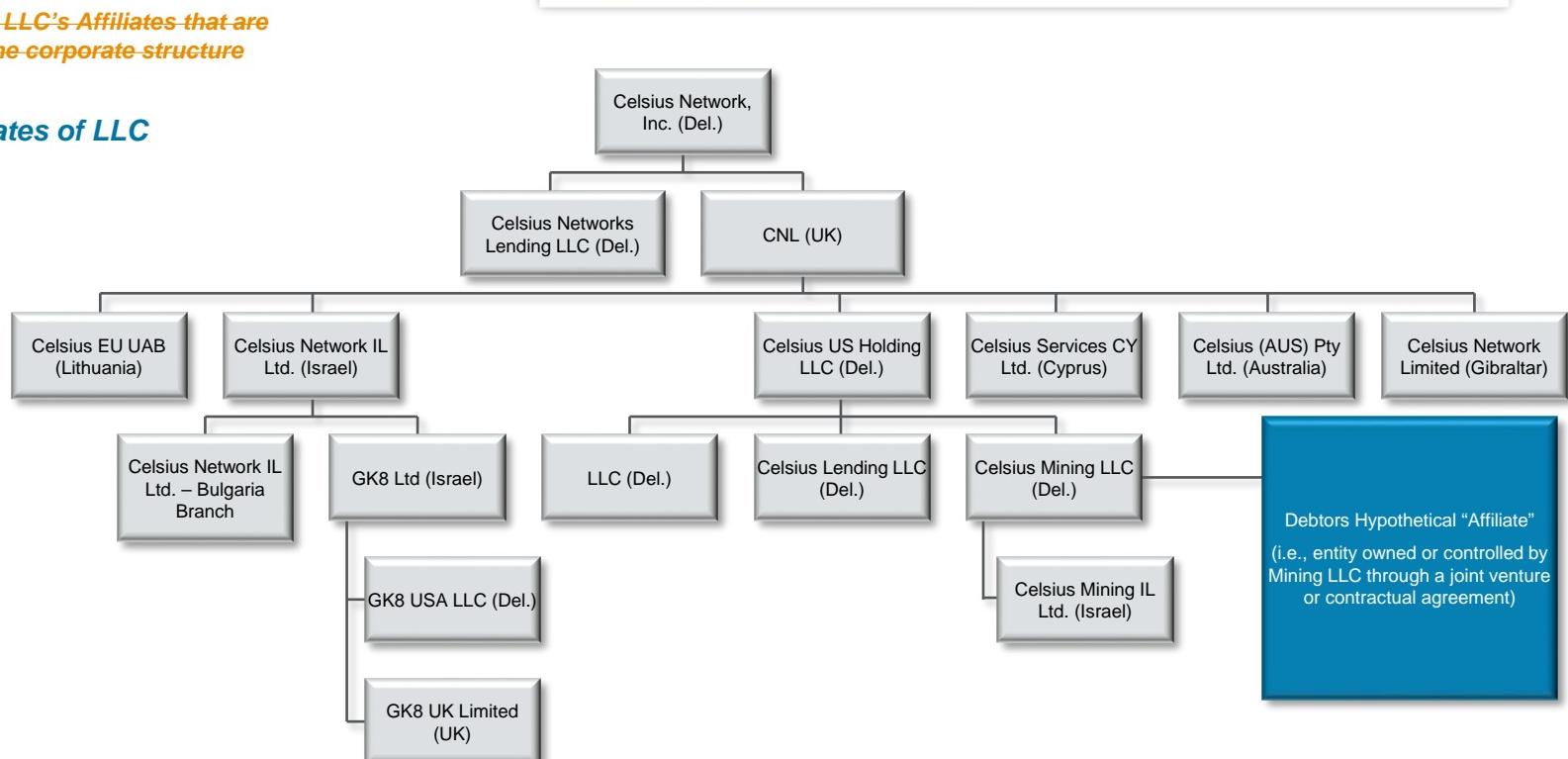
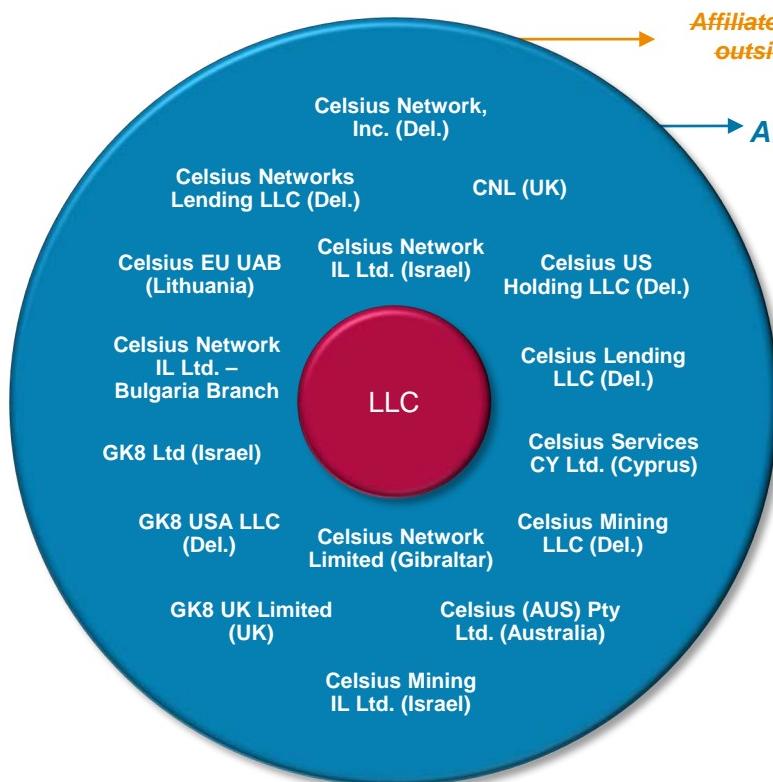
- This would require adding in words to the Limitation of Liability provision:

### **Debtors' Interpretation of Limitation of Liability Provision**

“. . . in no event shall you have any recourse . . . to or against any person or entity other than Celsius, including, without limitation, . . . any Affiliate [that is outside the Company’s corporate structure] . . . of Celsius.”

# The Debtors' and Committee's Interpretation Is Not Plausible (Cont'd)

Even the Debtors' own hypothetical Affiliate of LLC's Affiliates that is outside the Company's corporate structure does not work.



**"Affiliate"** means an entity that **owns or controls**, is **owned or controlled by**, or is **under common control or ownership** with a party, where control is defined as the direct or indirect power to direct or cause the direction of the management and policies of such party, whether through ownership of voting securities, by contract, or otherwise.

# The Debtors' and Committee's Interpretation Is Not Plausible (Cont'd)

The Debtors and Committee assert that the specific provision that controls is section 13.

That assertion is both factually and legally correct:

- Section 13 provides that
  - Customers have no rights to assets in the Earn or Borrow program, and
  - In bankruptcy, customers may not have any remedies or rights other than rights they may or may not have as a creditor.
- That section does not purport to (and does not) create any liability.

The only section that directly addresses liability is the Limitation of Liability provision.

## 13. Consent to Celsius' Use of Digital Assets

3. In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, any Eligible Digital Assets used in the Earn Service or as collateral under the Borrow Service may not be recoverable, and you may not have any legal remedies or rights in connection with Celsius' obligations to you other than your rights as a creditor of Celsius under any applicable laws.

# The Evidence Does Not Support the Debtors' and Committee's Interpretation

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The lack of evidence relied on by the Debtors and Committee is telling.



They point to a total of three pieces of evidence:

- Annual Report and Financial Statements for the period ended December 31, 2020
- Certain drafting history (*i.e.*, the change in the definition of Celsius from version 5 to 6)
- Social media statements

None of the purported evidence has any bearing on customer liability.



In fact, neither the Debtors nor the Committee even argue that in the event of ambiguity, they have extrinsic evidence sufficient to support their interpretation.